

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Craig D. Valerio,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:18cv823
vs.	:	
	:	Judge Susan J. Dlott
Warden, Chillicothe Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on August 5, 2019 a Report and Recommendation (Doc. 5). Subsequently, the plaintiff filed objections to such Report and Recommendation (Doc. 6).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 4) is GRANTED and petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 5) is DISMISSED without prejudice.

A certificate of appealability will not issue with respect to the petition since petitioner has not stated a "viable claim of the denial of a constitutional right" or presented issues that are "adequate to deserve encouragement to proceed further." *See Slack*, 529 U.S. at 475 (*citing*

Barefoot v. Estelle, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. §2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of an Order adopting the Report and Recommendation will not be taken in “good faith,” therefore petitioner is DENIED leave to appeal *in forma pauperis* upon showing of financial necessity. *See* Fed. R. App.P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.



Judge Susan J. Dlott
United States District Court